



THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

HEDLUND et al Atty. Ref.: **1579-561**

Serial No. 09/840,029 Group: **3742**

Filed: April 24, 2001 Examiner: **Robinson**

**For: MR-COMPATIBLE METHODS AND SYSTEMS FOR CARDIAC MONITORING
AND GATING**

* * * * *
July 11, 2005

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

COMBINED RESPONSE AND REQUEST (PETITION) UNDER RULE 183

Sir:

This paper is being filed in response to the substantive issues raised in the Official Action dated January 12, 2005.

The undersigned hereby petitions for a time extension up to, and including, July 12, 2005. As noted in section IV below, while the petition fees may be charged to the undersigned's Deposit Account in order to ensure entry and consideration of this paper, the undersigned formally requests (petitions) under 37 CFR §1.183 to suspend the rules so as to allow such petition fees to be immediately credited back to such account.

I. Procedural Background

This response is being filed subsequent to the Decision on Petition dated June 7, 2005 (hereinafter "the June 7th Decision") which GRANTED the applicants' petition dated August 16, 2004 for withdrawal of the restriction requirement in the office action

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HEDLUND et al
Serial No. 09/840,029
July 11, 2005

Negus et al anticipate under 35 USC §102(b) the *optical* detection of an anatomic structure affected by a cardiac cycle as defined by claim 1? It simply cannot.

Thus, withdrawal of the rejection advanced against claim 1 under 35 USC §102(b) based on Negus et al is in order.

While the arguments above have focused on the inappropriateness of Negus et al as a reference against pending claim 1, it will be observed that such arguments are equally germane to all pending claims herein. (Please see in this regard, the claim chart comparisons on pages 4 and 7 of the Petition filed August 16, 2004.)

Thus, allowance of claims 1-17 and 31-36 is in order.

IV. Concurrent Fee Authorization and Request (Petition) for Fee Refund and/or Suspension of the Rules to Accommodate the Same If Necessary

Any fee deemed necessary (including the time extension fee) to ensure proper entry of the present paper (and any other paper filed by this firm in the subject application), may be charged to our Deposit Account No. 14-1140.

Should the Office deem it necessary to charge the time extension fees against the undersigned's account in order to allow entry and consideration of the subject response, then please treat this as a formal request (petition) under 37 CFR §1.183 to suspend the rules so as to allow immediate refund of such fees to the undersigned's account. The reasons for such refund are stated below.

As noted above, the Examiner's January 12th Official Action was required to be issued notwithstanding the fact that the applicants' Petition to withdraw the restriction requirement of March 17, 2004 was filed some four months prior thereto on August 16, 2004. In the interim between August 16, 2004 and the January 12, 2005 Official Action, of course, the applicants responded on the merits via the Amendment dated October 21, 2004.

HEDLUND et al
Serial No. 09/840,029
July 11, 2005

And, since the June 7th Decision was issued some five (5) months after the January 12th Official Action and some nine (9) months after the August 16, 2004 Petition, the case could not reasonably be remanded to the Examiner for withdrawal of the January 12th Official Action so that an action on the merits of all pending claims herein could be issued. Thus, the present response has been necessary in order to preclude even the prospect of abandonment.

Under the circumstances noted immediately above, the undersigned submits it is manifestly unfair for the Office to collect the time extension fees to permit the timely filing of the present response due to the Office's delay in issuing its June 7th Decision. Moreover, the fact that the June 7th Decision confirmed the applicants' view that claims 1-17 and 31-36 should **always** have been treated collectively on the merits makes the filing of the subject response substantively unnecessary. Thus, the payment of any required time extension fees under these conditions would be confiscatory.

An early and favorable reply is awaited.

Respectfully Submitted,

NIXON & VANDERHYE P.C.

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